



U.S. Department of Justice

Environment and Natural Resources Division

90-11-3-07683/17

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September 1, 2023

By ECF

The Hon. Leda Dunn Wettre
United States Magistrate Judge
United States District Court for the District of New Jersey
Martin Luther King Building and U.S. Courthouse
50 Walnut Street, Room 4015
Newark, New Jersey 07101

Re: United States of America, Plaintiff v. Alden Leeds, Inc., et al.,
Defendants, Passaic Valley Sewerage Commissioners, et al.,
Intervenors. No. 22-cv-7326-MCA-LDW

Dear Magistrate Judge Wettre:

The United States seeks a 60-day extension of the September 22, 2023, deadline to notify the Court whether it will file a motion to enter the proposed Consent Decree and file a proposed schedule for the next steps. ECF Nos. 238, 244.

As discussed during the telephone conference held on May 19, 2023, the United States is evaluating the public comments on the proposed Consent Decree that was lodged with the Court on December 16, 2022, in the above captioned case. ECF No. 2-1. As previously described, during the comment period that closed on March 22, 2023, the United States received public comments, including the voluminous set of comments submitted by Intervenor Occidental Chemical Corporation ("OCC"). OCC's comments total 777 pages, with close to 24,000 pages of supporting exhibits and twelve declarations from OCC's

consultants. OCC's comments include over 100 legal and technical arguments, referencing 47 separate opinions by OCC's consultants.

Over the past several months, the United States has invested significant resources into evaluating the public comments and has made very meaningful progress. However, despite these diligent efforts, we cannot complete our evaluation of the comments by September 22nd. In addition to the sheer volume of work, the United States has encountered developments outside its control.

For example, concurrent with the evaluation of the comments, the United States received 23 Freedom of Information Act (FOIA) requests,¹ many with multiple parts and subparts, related to the proposed Consent Decree, all submitted by OCC or Protect the Public's Trust. Responding to those requests has required members of the EPA and DOJ case team to identify and collect responsive materials. That FOIA work has consumed a significant number of hours — hours that could not be devoted to evaluating the comments.² In addition, unforeseen but not unusual complications such as contracting issues and personal family matters requiring time off from work have also hindered the work of the United States and, to date, prevented us from completing our evaluation of the comments.

As a result, the DOJ and EPA case team has concluded it will not have fully evaluated the comments, briefed managers at EPA and DOJ, and made a final decision about whether to move to enter the Consent

¹ Six of these FOIA requests were received before March 22, 2023, but all have required resources and the attention of EPA and/or DOJ case team members after March 22, 2023.

² Even a seemingly simple FOIA request from Protect the Public's Trust — a request for a copy of the public comments — has taken more resources and attention than anticipated because DOJ discovered that certain confidential documents were mistakenly submitted by OCC as exhibits to its public comments. Some of OCC's exhibits are subject to a protective order in *OCC v. 21st Century Fox, et al.*, Case No. 2:18-cv-11273 (D.N.J.). Others exhibits marked "confidential" required some communication between DOJ and OCC, and between OCC and third parties, to resolve questions regarding their status.

Decree (or take some other action)³ by September 22nd. To ensure that the United States has sufficient time to complete its review of the voluminous comments, we respectfully request that the Court sign the enclosed proposed order to extend the deadline by 60 days, until November 21, 2023.

The United States consulted with the Intervenor in this case about this request. Intervenor Pharmacia LLC and Nokia of America Corporation do not oppose the requested extension. Intervenor Occidental Chemical Corporation also does not oppose the requested extension.⁴ Intervenor Passaic Valley Sewerage Commissioners indicated it would not oppose the request if the United States would agree to certain conditions regarding matters related to but outside the above-captioned case. The United States is not able to agree to those conditions.

The United States thanks the Court for its time and attention to this matter. We share the Court's desire to conclude this matter as soon as possible, and we assure the Court we are dedicating all available resources to that goal.

Respectfully submitted,

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Environment & Natural Resources Division

By: /s/ Laura J. Rowley
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³ It remains possible that the United States may ultimately conclude that the comments disclose facts or considerations that indicate the proposed Consent Decree must be modified or withdrawn.

⁴ Counsel for Intervenor Occidental Chemical Corporation noted that Occidental does not agree that the United States' work on responding to FOIA requests supports the requested extension.

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Enclosure

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